



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 4
ATLANTA FEDERAL CENTER
61 FORSYTH STREET
ATLANTA, GEORGIA 30303-8960

MAR 24 2011

INFORMATION REQUEST LETTER
URGENT LEGAL MATTER - PROMPT REPLY REQUESTED
CERTIFIED MAIL - RETURN RECEIPT REQUESTED

Thomas R. Morgan
General Manager
Montgomery Water Works & Sanitary Sewer Board
P.O. Box 1631
Montgomery, Alabama 36102

Re: Request to the **Montgomery Water Works & Sanitary Sewer Board** for Information Pursuant to Section 104 of CERCLA for the Capital City Plume Superfund Site (Site) in Montgomery, Alabama.

Dear Mr. Morgan:

The purpose of this letter is to request that the Montgomery Water Works & Sanitary Sewer Board (the Board) respond to the enclosed Information Request. The United States Environmental Protection Agency (EPA or Agency) is currently investigating the release or threatened release of hazardous substances, pollutants or contaminants, or hazardous wastes on or about the above-referenced Site. This investigation requires inquiry into the identification, nature, and quantity of materials generated, treated, stored, or disposed of at, or transported to the Site and the nature or extent of a release or threatened release of a hazardous substance or pollutant or contaminant at or from the Site.

The Capital City Plume Superfund Site is located in downtown Montgomery, Montgomery County, Alabama and consists of groundwater plumes of tetrachloroethene (PCE), trichloroethene (TCE), benzene, toluene, ethylbenzene and xylene (collectively BTEX), metals and potentially other hazardous substances. The Site was proposed to the National Priorities List (NPL) on May 11, 2000. EPA believes that the Board may have information which may assist the Agency in its investigation of the Site.

Pursuant to the authority of Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9604, as amended, the Board is hereby requested to respond to the Information Request set forth in Enclosure A hereto.

While EPA seeks your cooperation in this investigation, compliance with the Information Request is required by law. Failure to respond fully and truthfully to the Information Request within **thirty (30) days** of receipt of this letter, or to adequately justify such failure to respond, can result in enforcement action by EPA pursuant to Section 104(e) of CERCLA, as amended. This statute, as modified by the Debt Collection Improvement Act of 1996, 40 C.F.R. Part 19,



permits EPA to seek imposition of penalties of up to thirty-seven thousand five hundred dollars (\$37,500) for each day of continued non-compliance. Please be further advised that provision of false, fictitious, or fraudulent statements or representations to the Information Request may subject you to criminal penalties under 18 U.S.C. § 1001.

This Information Request is not subject to the approval requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. § 3501, et seq.

The Board's response to this Information Request should be mailed to:

Melissa Waters
SEIMB 11th Floor
U.S. Environmental Protection Agency, Region 4
61 Forsyth Street, S.W.
Atlanta, Georgia 30303

Due to the seriousness of the problem at the Site and the legal ramifications of the Board's failure to respond properly, EPA strongly encourages the Board to give this matter immediate attention and to respond to this Information Request within the time specified above. If you have any legal or technical questions relating to this Information Request, you may consult with EPA prior to the time specified above. Please direct legal questions to Stephen P. Smith, Assistant Regional Counsel, at (404) 542-9554. Technical questions should be directed to Melissa Waters at the above address, or at (404) 562-8873. Thank you for your cooperation in this matter.

Sincerely,



Stephen P. Smith
Assistant Regional Counsel

Enclosure

Enclosure A
Request for Information Pursuant to Section 104 of CERCLA
Capital City Plume Superfund Site (Site)
Downtown Montgomery, Alabama

Instructions

1. Please provide a separate narrative response to each and every question and subpart of a question set forth in this Information Request.
2. Precede each answer with the number of the question to which it corresponds.
3. If information or documents not known or not available to the Board as of the date of submission of a response to this Information Request should later become known or available to the Board, it must supplement its response to EPA. Moreover, should the Board find, at any time after the submission of its response, that any portion of the submitted information is false or misrepresents the truth, the Board must notify EPA of this fact as soon as possible and provide EPA with a corrected response.
4. For each document produced in response to this Information Request, indicate on the document, or in some other reasonable manner, the number of the question to which it responds.
5. The information requested herein must be provided even though the Board may contend that it includes possibly confidential information or trade secrets. The Board may, if it desires, assert a confidentiality claim covering part or all of the information requested, pursuant to Sections 104(e)(7)(E) and (F) of CERCLA, 42 U.S.C. Sections 9604(e)(7)(E) and (F), Section 3007(b) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. Section 6927(b), and 40 C.F.R. Section 2.203(b), by attaching to such information at the time it is submitted, a cover sheet, stamped or typed legend, or other suitable form of notice employing language such as "trade secret," or "proprietary," or "company confidential." Information covered by such a claim will be disclosed by EPA only to the extent, and only by means, of the procedures set forth in statutes and regulation set forth above. If no such claim accompanies the information when it is received by EPA, it may be made available to the public by EPA without further notice to the Board. The Board should read the above cited regulations carefully before asserting a business confidentiality claim since certain categories of information are not properly the subject of such a claim.

Definitions

The following definitions shall apply to the following words as they appear in this Enclosure A:

1. The term "you," "Respondent" and "Board" shall mean the Montgomery Water Works and Sanitary Sewer Board, its current and former officers, managers, employees, contractors, trustees, partners, agents, predecessors and successors in interest or assigns, and all subsidiaries, divisions, affiliates, and branches of the Montgomery Water Works and Sanitary Sewer Board and its predecessors and successors.
2. The term "person" shall have the same definition as in Section 101(21) of CERCLA: an individual, firm, corporation, association, partnership, consortium, joint venture, commercial entity, United States Government, State, municipality, commission, political subdivision of a State, or any interstate body.
3. The term "company" shall mean any business entity, however formally or informally organized, which has ever existed, regardless of its current status.
4. The terms "Site," "Facility" and "Property" shall mean and include any and all property on or about an area consisting of approximately fifty (50) city blocks, located in and north of downtown Montgomery, Montgomery County, Alabama, and that is known as the Capital City Plume Superfund Site. See attached map for general depiction of Site.
5. The term "hazardous substance" shall have the same definition as that contained in Section 101(14) of CERCLA and includes any mixtures of such pollutants and contaminants with any other substances. Petroleum products mixed with pollutants and contaminants are also included in this definition.
6. The term "hazardous waste" shall have the same definition as that contained in Section 1004(5) of RCRA.
7. The term "identify" means, with respect to a natural person, to set forth the person's name, present or last known business address and business telephone number, present or last known home address and home telephone number, and present or last known job title, position or business.
8. The term "identify" means, with respect to a corporation, partnership, business trust or other association or business entity (including a sole proprietorship), to set forth its full name, address, legal form (e.g., corporation, partnership, etc.), organization, if any, and a brief description of its business.
9. The term "identify" means, with respect to a document, to provide its customary business description, its date, its number, if any (invoice or purchase order number), the identity of the author, addresser, addressee and/or recipient, and the substance or the subject matter.

10. The term "pollutant or contaminant" shall have the same definition as that contained in Subsection 101(33) Of CERCLA, 42 U.S.C. § 9601(33), and includes any mixtures of such pollutants and contaminants with any other substances.
11. The term "release" has the same definition as that contained in Section 101(22) of CERCLA, 42 U.S.C. Section 9601(22), and includes any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment, including the abandonment or discharging of barrels, containers, and other closed receptacles containing any hazardous substance or pollutant or contaminant.
12. The term "document" or "documents" includes any written, recorded, computer generated, or visually or aurally reproduced material of any kind in any medium in your possession, custody, or control or known by you to exist, including originals, all prior drafts, and all non-identical copies. These may include by way of illustration and not by way of limitation, any invoice, manifest, bill of lading, receipt, endorsement, check, bank draft, canceled check, deposit slip, withdrawal slip, order, correspondence, record book, minutes, memorandum of telephone and other conversations including meetings, agreement and the like, diary, calendar, desk pad, scrapbook, notebook, bulletin, circular, form, pamphlet, statement, journal, postcard, letter, telegram, telex, report, notice, message, analysis, comparison, graph, chart, interoffice or intraoffice communications, photostat or other copy of any documents, microfilm or other film record, any photograph, sound recording on any type of device, any punch card, disc or disc pack; any tape or other type of memory generally associated with computers and data processing (together with the programming instructions and other written material necessary to use such punch card, disc, or disc pack, tape or other type of memory and together with printouts of such punch card, disc, or disc pack, tape or other type of memory); and (1) every copy of each document which is not an exact duplicate of a document which is produces, (2) every copy which has any writing, figure or notation, annotation or the like on it, (3) drafts, (4) attachments to or enclosures with any document, and (5) every document referred to in any other document.
13. The terms "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of this Information Request any information which might otherwise be construed to be outside its scope.
14. The term "arrangement" means every separate contract or other agreement between two or more persons.
15. The terms "transaction" or "transact" mean any sale, transfer, giving, delivery, change in ownership, or change in possession.
16. The term "property interest" means any interest in property, including but not limited to any ownership interest, including an easement, any interest in the rental of property, any interest in a corporation that owns or rents or owned or rented property, and any interest as either the trustee or beneficiary of a trust that owns or rents, or owned or rented property.

17. The term "asset" shall include the following: real estate, buildings or other improvements of real estate, equipment, vehicles, furniture, inventory, supplies, customer lists, accounts receivable, interest in insurance policies, interests in partnerships, corporations and unincorporated companies, securities, patents, stocks, bonds, and other tangible as well as intangible property.
18. Words in the masculine shall be construed in the feminine, and vice versa, and words in the singular shall be construed in the plural, and vice versa, where appropriate in the context of a particular question or questions.
19. All terms not defined herein shall have their ordinary meaning, unless such terms are defined in CERCLA, RCRA, 40 C.F.R. Part 300, or 40 C.F.R. Parts 260-280, in which case the statutory or regulatory definitions shall apply.

Questions

1. Identify the person(s) responding to these questions on behalf of the Board.
2. For every question contained herein, identify all persons consulted in the preparation of responses.
3. For every question contained herein, identify all documents consulted, examined, or referred to in the preparation of the response that contain information responsive to the question and provide true and accurate copies of all such documents.
4. Identify all past and current owners and/or operators of the sanitary sewer lines located within or near the Site. State the dates during which all past and current owners and/or operators owned, operated or leased any portion of the sanitary sewer lines located within the Site and provide copies of all documents evidencing or relating to such ownership, operation or lease, including but not limited to purchase and sale agreements, deeds, leases, etc.
5. Identify any persons who concurrently with the owner/operator exercised or currently exercise actual control or who held or currently hold significant authority to control activities related to the sanitary sewer lines located within or near the Site.
6. Identify any and all agreements with the City of Montgomery regarding the ownership and/or operation of the sanitary sewer lines located within or near the Site.
 - a. Provide all documents that refer, relate to, or evidence such agreements.
7. Identify all federal, state, and local authorities that regulate your operations related to the sanitary sewer lines located within or near the Site.
8. Identify the history, layout, design, and construction of the sanitary sewer lines located within or near the Site. Provide the following:
 - a. Date constructed
 - i. Identify any and all historical changes and/or modifications since its original construction;
 - b. A map and/or grid showing the sewer's layout and boundaries within the Site;
 - c. The construction (e.g., materials, composition), volume, and size; and
 - d. The past and current conditions, including general condition (e.g., leaking pipes, corroded pipes, or new piping installed), quality of maintenance (e.g., equipment in disrepair or inspected periodically), adherence to procedures (e.g., failure to monitor or quality of supervision) and management.
9. Identify the geological makeup and composition of soil surrounding the sanitary sewer lines located within or near the Site.
10. Identify any and all maintenance, inspection, and repair policies associated with the ownership and/or operation of sanitary sewer lines located within or near the Site.
 - a. Provide all documents that refer, relate to, or evidence such policies.

11. Identify any and all discoveries of any hazardous substances, pollutants or contaminants within the sanitary sewer lines located within or near the Site which have occurred during the Board's ownership and/or operation of the sanitary sewer lines. Provide the following information, if any such instances occurred:
 - a. When such discoveries occurred;
 - b. The amount of each hazardous substance, pollutant, or contaminant discovered;
 - c. Any and all activities undertaken in response to each such discovery;
 - d. Any and all investigations of the circumstances, nature, extent and location of each discovery, including the results of any soil, water (ground and surface), or air testing undertaken; and
 - e. Identify all persons with information relating to these discoveries.

12. Identify any and all leaks within the sanitary sewer lines located within or near the Site which have occurred during the Board's ownership and/or operation of the sanitary sewer lines located within or near the Site. Provide the following information, if any such instances occurred:
 - a. When such leaks occurred;
 - b. How the leaks occurred;
 - c. How the leaks were detected;
 - d. The amount of each substance, liquids, and/or materials leaked;
 - e. Any and all activities undertaken in response to each such leak;
 - f. Any and all investigations of the circumstances, nature, extent or location of each leak, including the results of any soil, water (ground and surface), or air testing undertaken; and
 - g. Identify all persons with information relating to these leaks.

13. If any of the documents solicited in this information request are no longer available, please indicate the reason why they are no longer available. If the records were destroyed, provide us with the following:
 - a. The Board's document retention policy;
 - b. A description of how the records were destroyed (burned, archived, trashed, etc.) and the approximate date of destruction; and
 - c. A description of the type of information that would have been contained in the documents;

Site Map

